

REMARKS

New dependent claims 12 -14 particularize relative sizes of areas of the vapor restrictor portion of the top wall and the vapor exit aperture which will ensure, in one embodiment, that the vapor restrictor will materially restrict the flow of flammable vapors from the gel fuel and the flow of ambient oxygen into the cartridge sufficiently to provide the self regulating effect.

Basis for the amendment is found on page 14 of the specification and in the drawings.

In the first paragraph of the rejection of claims 4,5 and 9-11 under 35 USC 103 as being unpatentable over Lipper, the examiner has failed to describe the prior art in terms of the claimed invention, leaving the applicant to speculate at claimed structure which the examiner considers identical or equivalent to the prior art, representing an impermissible, conclusory approach without reasoning, inevitably resulting in incomplete examination. Furthermore, the description given includes reference to wick material 22 covered by a metal mesh 24 and a handle 30 which may be swung down to nestleall unclaimed elements, irrelevant to examination and, therefore, inherently obscuring.

Actually, removal of the unclaimed, and therefore superfluous, constructional elements from the Lipper fuel receptacle, (wick material 22 , metal mesh 24 and, handle 30), results in the well known 'paint' can structure which the technician would recognize as already mentioned as prior art in the background section of the present application, (US 4,573,905 and 4,838,781, and Figures 5. and 7), for example, listed in the IDS filed 2007, also acknowledged as reviewed, (see also US 4,896653, Fig 1).

As claims 9 and 10 have previously been deemed allowable thereover, a **res judica** type precedent of patentability has been established making the present rejection moot.

Notwithstanding, the following distinctions from the Lipper prior art, indicative of patentability should be noted.

Concerning the claimed vapor restrictors, Lipper teaches a lip (28) provided only for retention of the aforementioned mesh 26 and wick 24 and which, as well understood by the technician, is clearly not of sufficient area relative to the surface area of the aperture, to provide the claimed function of vapor flame restriction by materially effecting the burning rate of fuel therein or flame size to an extent significant in the working environment of a domestic fireplace.

This distinction is further particularized for emphasis in new claims 12-14.

Furthermore, the teaching of Lipper as a whole points the addressee away from attempting self regulation as Lipper directs that the can 20, is not self regulating in the environment of use, but specifically requires the provision of the cover member 32 which must be manually adjusted for flame regulation by varying registration of the holes 48 and 56 on the stationary and rotatable elements 34 and 35, respectively.

A requirement for such adjustment by the consumer when the burner is seated in a loose log filled domestic fireplace would also be undesirable, possibly posing a potential safety risk.

Furthermore, the present case is distinguished from Dailey as the claimed invention represents not only a change of configuration but also a change in function arising as a direct consequence of the change in configuration. The claimed elements result in self regulated combustion providing a characteristic elongate flame to fill the width of a domestic fireplace to a desirable maximum while minimizing wasteful depth and combustion energy and to maintain such characteristic throughout combustion, until the fuel is exhausted -clearly representing a significant functional difference.

As pointed out in MPEP 2144, where the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.

It is therefore submitted that that the claims define patentable subject matter.

Favorable reconsideration of the application is requested.

Respectfully submitted,
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